

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,)
) File Nos. 05cr13(1)
) 19cr145(1)
Plaintiff,) (DWF/LIB)
)
vs.)
) St. Paul, Minnesota
David Allen Neadeau,) September 3, 2020
) 1:13 p.m.
Defendant.)

BEFORE THE HONORABLE DONALD W. FRANK
UNITED STATES DISTRICT COURT JUDGE
(SENTENCING & FINAL REVOCATION HEARING)

APPEARANCES

For the Plaintiff: United States Attorney's Office
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Proceedings recorded by mechanical stenography;
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1 P R O C E E D I N G S

2 IN OPEN COURT

3 (Defendant present)

4 THE COURT: Why don't we have introduction of
5 counsel first. We can start with government's counsel then
6 move over to defense counsel.

7 MR. WESLEY: Justin Wesley for the government,
8 Your Honor.

9 MR. CORNWELL: Kevin Cornwell for Mr. Neadeau.

10 THE COURT: And good afternoon to each of you,
11 including to you, Mr. Neadeau.

12 And the -- a couple of things before I suggest how
13 we proceed with the case. When counsel talks, you're free
14 to leave your mask on or off as you address the Court,
15 either way is fine, the lawyers do it each in both ways.

16 And then, secondly, something that's quite common
17 in state court, it was when I was a state judge many, many
18 years ago, but the -- and I think it still is, it's very
19 rare in federal court where -- meaning that lawyers, either
20 because they're required to or always stand up when they
21 address the Court, you don't -- I'd urge you not to stand
22 up, even though sometimes lawyers are uncomfortable doing
23 that, so that you can talk close to the microphone and
24 everybody can hear and my court reporter can get everything
25 down, and so I would urge that, as unusual as that is, but

1 these are kind of unusual times we're living in and so we'll
2 proceed in that way.

3 Then having said that, I would make the following
4 suggestion how I proceed, not unique to this case.

5 That the Court will first check in with counsel
6 with respect to whether there's any -- anything that counsel
7 want to be heard on, there doesn't appear to be any issues
8 on the application of the advisory guidelines and the
9 mandatory minimum sentence of 180 months, but I'll confirm
10 that with the counsel.

11 Then once I confirm that then we can move on to --
12 I'll hear argument from defense counsel on what they think a
13 fair sentence could be and absent objection, but I think
14 you've both addressed this in your written submissions. You
15 can also address that since you know it will be -- it's
16 likely 180 months, because that's the mandatory minimum on
17 the sentence before the Court on the violation hearing, you
18 can address that at the same time, and you both have in your
19 submissions to the Court, as well.

20 Then at that time, Mr. Neadeau, as you may be
21 aware, you have a right to make any comments to the Court.
22 You don't have to say anything if you don't want to. As you
23 know, some defendants talk at these hearings, some don't.
24 The only rule that does not change from one case to another
25 is the Judge cannot use it -- cannot use it in a bad or

1 negative way if you don't want to add something to what your
2 attorney has said. And then subject to any
3 response/rebuttal I'll move on to government's counsel on
4 any positions they have.

5 If we proceed in that order, is that acceptable to
6 the government?

7 MR. WESLEY: It is, Your Honor. Thank you.

8 THE COURT: To defense?

9 MR. CORNWELL: Yes, Your Honor.

10 THE COURT: And then I'll acknowledge for the
11 record, in addition to the written memorandums I've received
12 from each counsel, I will also acknowledge the receipt of
13 the 23-page report from Erin Hunter entitled, A sentencing
14 memorandum, based upon an interview that was, of course,
15 also done by Zoom, with Mr. Neadeau. I've had a chance to
16 read that as well.

17 And so with that in mind, I'll begin with the
18 government. Any objections to the computation under the
19 guidelines?

20 And I mean, frankly speaking, they came out
21 consistent with the -- what was contemplated in the Plea
22 Agreement, but anything further on the advisory
23 guidelines?

24 MR. WESLEY: Nothing further, Your Honor.

25 THE COURT: For defense counsel?

1 MR. CORNWELL: No, Your Honor.

2 THE COURT: Then the Court finds that based upon
3 adjusted offense level of 30, and a Criminal History
4 Category of V, that creates an advisory sentence of 180 to
5 188 months, and notably a mandatory minimum sentence of 180
6 months.

7 A supervised release period of two to three years.

8 A fine of \$30,000 to \$250,000. I'll be imposing
9 no fine today.

10 And a \$100 special assessment.

11 And then separate from that, the advisory
12 guidelines on the -- since Mr. Neadeau is on probation for a
13 similar charge, actually I was the sentencing Judge back in
14 2006, that the advisory guideline there is 51 to 63 months.
15 And, admittedly, there will be an issue of, well, apart from
16 what the advisory guidelines are, the same guidelines
17 suggest a consecutive sentencing rather than concurrent,
18 separate from the issue of if it should be something other
19 than 51 to 63.

20 So with that, I'll hear from defense counsel.

21 And I will indicate, to the extent -- Stephanie
22 Thompson who's been the supervising agent, has my permission
23 not to appear. We didn't pull up the big screen here for
24 her to appear, but myself, and Ms. Thuringer, we both had a
25 20-minute conference with her before we came to the court.

1 So she's familiar with it going on, currently, and we just
2 finished a conference call with her.

3 Whenever you're ready, counsel.

4 MR. WESLEY: Thank you, Your Honor.

5 Before I begin, I just want to acknowledge some
6 folks who are here.

7 THE COURT: All right.

8 MR. CORNWELL: Sitting behind me are Mr. Neadeau's
9 children, as well some other family members, as well, and
10 some of his friends. So they've shown up here, I think, in
11 larger numbers than I anticipated when I spoke to the clerk,
12 but I'm glad that they're here, I know that he's glad that
13 they're here, as well. So they offer their support to Mr.
14 Neadeau, of course.

15 I do want to, of course, acknowledge Ms. Hunter's
16 assistance in providing her very, I guess, personal and
17 intimate look into Mr. Neadeau's life. Very detailed. I
18 find it very interesting. It's the first time I've used
19 her. I hope it was helpful to the Court. I know it was to
20 myself and to Mr. Neadeau, so I do want to acknowledge and
21 thank her for what she did.

22 It is our position as stated, Your Honor, in the
23 sentencing memorandum that was filed that 180 months is
24 sufficient but not greater than necessary to accomplish the
25 sentencing factors set forth in the statute.

1 It is also our position that any time that is
2 imposed as a result of this supervised release violation run
3 concurrent. Although the Court is correct in that the
4 guidelines do recommend, or suggest, or even make it
5 mandatory that any time run consecutive.

6 THE COURT: Well, I think you're correct in your
7 memorandum, I doubt the government will disagree, that
8 mandatory, only to the extent that it's suggested by the
9 guidelines, but under the -- under the 3553(a) factors the
10 case law, I think that obviously, whether it's 51 to 63,
11 something more than that, less than that, concurrent,
12 consecutive, is the Court's call.

13 So I'm -- until somebody persuades me otherwise,
14 I'm not going into the hearing to saying, well, nothing
15 makes any difference. The Court must -- must give a
16 consecutive sentence, period. And I -- that's not the case.
17 Although it is true the -- that's what the guidelines --
18 there's no case law saying, Judge, you can ignore the
19 federal statute and the guidelines say you must give it no
20 matter what. And that's -- because this isn't the first
21 case in this circuit or other places where that's -- that
22 issue's come up.

23 MR. CORNWELL: Right. Yep. And, of course, our
24 position is well stated that we are asking the Court to
25 exercise its discretion and run any time concurrently on the

1 supervised release violation.

2 Again, as the Court indicated, I know the Court
3 has reviewed the sentencing memorandum, as well as Ms.
4 Hunter's memorandum as well, so I'm not going to rehash
5 everything in great detail but there are some things I want
6 to discuss with the Court that I find particularly
7 significant and worth noting.

8 I think it's clear in reading through Ms. Hunter's
9 memorandum that Mr. Neadeau lived a life full of struggles.
10 I don't think that's surprising.

11 She describes him as being kind of torn between
12 two cultures. He is mixed race. He is African American and
13 Native American. And I think she spent a great deal of time
14 with him and I think he spent a great deal with her talking
15 about that. And the inner turmoil that it caused him as a
16 child, and as an adult, and continues to cause him, really,
17 to some extent throughout his life. She talked about him
18 being bullied, and ridiculed in school and not quite
19 feeling as if he felt squarely belonged within either
20 culture. And I think that struggle continues today. But as
21 he continues to get older, I think he's taken a much more
22 spiritual look at that issue. And I think he's responding
23 to it.

24 And he's come to more peace with that issue,
25 although I -- it's difficult for most of us to ascertain

1 what that would entail, but that is, I think, a significant
2 issue in his upbringing and continues to be.

3 It's also clear that he had a very, I think,
4 tumultuous upbringing. Again, not surprising. But there
5 was a relatively unstructured family situation that he grew
6 up in, spent time bouncing between various family members
7 and various communities. Whether it was in the cities or up
8 in Red Lake, he was bouncing back and forth between folks.

9 He witnessed substance abuse as a child. He
10 witnessed violence as a child. And really -- and this isn't
11 a critique to anybody who's in the courtroom, his mother --
12 his mother's not here, but I think his youth and his
13 upbringing lack stability and the guidance that, of course,
14 is so crucial as we grow up.

15 I think he mentioned to Ms. Hunter that really the
16 only time he felt any real sense of stability was when he
17 lived with his aunt, his Aunt Mary. He was able to, to his
18 credit, finish and graduate from Red Lake High School, join
19 the Army Reserve and then attended Bemidji State for a short
20 period of time to play football there. Unfortunately things
21 didn't work out for him there and that's where things, I
22 think, started to really spiral.

23 I think he moved back in and started to associate
24 with folks that were negative for him. He started using,
25 more heavily, controlled substances, alcohol. Things

1 spiralled down for him. He was depressed after he left
2 college. I think he saw that as a great opportunity for
3 him. And not surprisingly, all these things in combination
4 really bring us here today.

5 In hearing all of these things and in reading
6 through his life history, life story, I guess one wouldn't
7 be surprised if Mr. Neadeau was angry and bitter about the
8 situation, about people in his life. And it's especially
9 true, I think, when we consider that he spent nearly
10 19 months in the Sherburne County Jail, which is challenging
11 in the best of times but, of course, with COVID now,
12 probably nothing short than a living nightmare given the
13 fears that are surrounding COVID.

14 I think he, as well as everyone in the Sherburne
15 County Jail at this time, but he, especially given the
16 length of time he's spent there, it's really been an
17 unprecedented hardship on folks and him especially included
18 because of the length of time. He's has sat there, again,
19 almost 19 months in the Sherburne County Jail. He is not,
20 however, bitter. He is not angry.

21 The first time I met him and ever since I've dealt
22 with him he's been very reserved, very respectful, very
23 appreciative of everything that people have done for him.
24 He's not making excuses. He hasn't done that since day one.

25 He is -- and I know Ms. Hunter used a bunch of

1 words to describe her impressions of him and, again, I would
2 agree with all of them, and I use my own word as mentioned
3 in the memorandum, Your Honor, and it's hopeful. And that's
4 what I really see him as. He's hopeful that he can
5 reestablish at some time the relationship with his children
6 who, again, are here and are reaching out to him.

7 I think he's hopeful that he can mend old
8 relationships with his mother, particularly, and with
9 siblings. He can establish new relationships, as well, Your
10 Honor. I think he's hopeful of that. And, of course, he's
11 hopeful that he's going to be given that opportunity by the
12 Court to accomplish all of these things.

13 As I mentioned, the imposition of 15 years,
14 180 months is a very sufficient or significant penalty,
15 especially given the fact that he's 53 years old at this
16 point. Even in the best of situations, if he's only looking
17 at 180 months, he's looking at release in the early 60s,
18 perhaps, to mid-60s.

19 It's also worth mentioning, Your Honor, that as
20 part of the Plea Agreement the government has agreed to
21 remain silent as to how the Court should handle that issue
22 in terms of whether the time should run concurrently or
23 consecutively on the supervised release violation.

24 Again, we've indicated in the memorandum why we
25 believe it would be most appropriate for the Court to

1 sentence him concurrently. The government has indicated it
2 believes 15 years is sufficient but not greater than
3 necessary on the underlying offense and is making no
4 argument on supervised release.

5 Your Honor, I'm asking Court to give him an
6 opportunity and a reason for hope. Again, 15 years is
7 sufficient but not greater than necessary to accomplish all
8 the sentencing factors.

9 We are asking the Court to exercise great
10 compassion and understanding in running any time imposed
11 concurrently on the supervised release violation.

12 The final thing that he asked me to ask the Court
13 to consider is that although the Court only makes
14 recommendation, of course, to the Bureau of Prisons, he's
15 asking the Court to recommend a placement at FCI, somewhere
16 close to Minnesota. Whether that happens or not remains to
17 be seen, but he's asking the Court to consider that. Thank
18 you.

19 THE COURT: If I may ask you, counsel, before I
20 ask if your client wishes to -- obviously one of the issues
21 that's kind of in the air here, and I would be asking it --
22 I would be asking this question even if I hadn't been the
23 sentencing Judge back in 2006, and that is someone might be
24 saying, obviously, obviously, he's 53 years old. Now, you
25 might be saying, well, Judge, it was 15 years back then,

1 too, and here we are back again on a similar weapons charge
2 and he's still deal with alcohol, drug, and other mental
3 health issues.

4 What's most important for me to know about that?
5 And, obviously, it was covered to some extent in Ms.
6 Hunter's report and your memorandum but I thought, well,
7 since it's kind of in the air here, I'd thought I'd ask it.

8 MR. CORNWELL: As I read through the supervised
9 release documentation, it appears to me as if he did fairly
10 well for a period of time, for I think over a year he was --
11 he was doing well. What caused him to slip back into this,
12 I suspect, was some drug issues, some controlled substance
13 issues.

14 Of course, as I noted, any offense is serious.
15 This offense thankfully didn't involve anybody who was
16 injured. I think the weapon was found in his vehicle. It
17 wasn't used, it wasn't brandished, it wasn't threatened to
18 be used against law enforcement. It was found underneath a
19 backpack or something similar to that as I recall. So it
20 wasn't really used in the commission of the offense to
21 frighten or to harm anybody.

22 Again, he did well on supervised release. I think
23 the position is -- imposition of consecutive sentencing, for
24 all intense purposes, could be considered almost a life
25 sentence.

1 If the Court were to impose even the low end,
2 51 months consecutive, he's looking at probably 70,
3 somewhere close to there, at least.

4 So, again, I would simply indicate that he did do
5 well for a period of time. He was working. Apparently he
6 remained chemical free, or relatively chemical free, during
7 that period of time.

8 He can make it, there's no question in my mind he
9 can make it. He's a brilliant person. He's very smart,
10 very intelligent, and well-spoken in everything. He can
11 make it, Your Honor, we're just asking the Court to -- to
12 recognize his success while on supervised release, to some
13 extent, the factors of the offense itself and his age, as
14 well, Your Honor.

15 THE COURT: Do you know if your client wishes to
16 make any statement to the Court?

17 You have the rights, Mr. Neadeau, to make any
18 statement. As you're probably aware, you don't have to say
19 anything. As I said earlier, some defendants talk at these
20 hearings, some don't. It's entirely up to you.

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And if you can kind of speak close to
23 the microphone because it's not -- it's not a fancy
24 entertainment mic, so you'll have to kind of have it close
25 to you, otherwise everybody can't hear and we can't get it

1 down, so.

2 Okay. You can go ahead and state anything you'd
3 like.

4 THE DEFENDANT: Yes. Can you hear me, Your Honor?

5 THE COURT: I can.

6 THE DEFENDANT: Thank you.

7 My daughters are here today. I call them the
8 three amigos. My twin boys, my daughter-in-law. My boys
9 are young fathers. My son, Jared, just recently had his
10 first son. Named him after me, as well as my other son. I
11 have another grandson that's named after me.

12 I think about that, you know. You know in my
13 mind, you know, I'm not deserving of that, and yet my
14 children, you know, had done that to honor me in their own
15 way. And I look at that as them not giving up on me, you
16 know.

17 I've thought long and hard about what I was going
18 to say today, Your Honor. Tried a couple hundred times to
19 sit down and write and it never worked out. And I just
20 decided that when this day comes, you know, I'm just going
21 to speak from my heart, you know, because that's the easiest
22 thing to do.

23 On the way here, you know, I haven't seen the
24 outside in a while, and seeing the free world made me think
25 of, you know, that first day that I was released from prison

1 after doing twelve and a half years. And, you know, it was
2 the greatest day of my life, you know, to be free again.

3 I made my way to Crookston, a small rural town in
4 northern Minnesota.

5 THE COURT: I've been there a number of times.
6 I'm familiar with it.

7 THE DEFENDANT: Figuring I was going to make a new
8 start and try to do it, you know, somewhere where things
9 were slow, you know, and not the hustle and bustle of the
10 big city, you know, not too much of the craziness of the
11 reservation, you know, just a place to start fresh, you
12 know.

13 I got to the halfway house -- well, actually it
14 was a county jail but better than prison. And the first day
15 I was there was orientation, things like that. And the
16 second day was they put an ankle monitor on my ankle and
17 told me I could leave for a couple hours. So okay. Where
18 am I going to go? Well, maybe you can go up to Walmart or
19 something, go shopping and, you know, get some hygiene
20 products, or whatever, but you're free to go for a couple
21 hours and take care of some things. Okay.

22 How do I get there? You know. They give me a
23 little map, pretty easy to get there. Just two miles to
24 your right and one mile to your left and you'll run right
25 into it. So I begin my journey. I'm walking on this rural

1 highway and, you know, just, the beautiful scenery,
2 something I haven't seen for a long time, you know. And
3 then this big truck drives past me and I felt the wind, you
4 know, so I figured I better start paying attention otherwise
5 I'm going to get -- I might end up being roadkill.

6 Well, I made it. I made it safely to the Walmart.
7 And as I go to the door to go to grab the door, it opened
8 up. I forgot doors do that. And so I walk into the Walmart
9 Your Honor, and I'm standing there and then I just was
10 overwhelmed. Like I just was like stuck, you know, and I
11 realize that I stopped breathing so I had to tell myself to
12 breathe again.

13 Well, I decided to step back out. So I walked
14 back out and got myself together and then decided that I was
15 going to give it another try. So I turned around and I went
16 back into the Walmart. And I'm standing there again and I
17 had to remind myself to breathe. And this young girl walks
18 up to me, and she must have noticed that something was going
19 on with me, so she walks up to me and she patted me on the
20 shoulder and she asked me if I was okay and if there was
21 anything they could do to help me.

22 And so I says to her, I says, yeah, can you tell
23 me where the coffee is? So she brought me to the coffee
24 aisle. And I'm standing there looking for this yellow bag
25 of coffee called Keefe that they sell to us in the prison

1 commissary. Been drinking it for twelve and a half years.
2 So I'm standing there and I see all these coffee brands, and
3 all of these creamers, and pouches of things, but I couldn't
4 find my coffee. And, well, anyway, I realize I had been
5 standing there for about a half hour and only got two hours
6 to get back to the jail, so I just gave it up.

7 I walked out of the Walmart, didn't buy nothing
8 and I walked back to the jail. It was quite a -- quite an
9 adventure, quite an experience, but I knew that I needed
10 some help. So I called my mom and my mother came and she
11 took me to Walmart. And then so I had to pay attention
12 because my mother's trying to show me how this is done now,
13 trying to show me the signs and, you know, boy, you can
14 read, I know I taught you how to read.

15 So it went well, you know. My mom kind of showed
16 me how to shop at Walmart and Walmart became one of my
17 favorite places to be. Every chance I got, I was going to
18 Walmart. And if you need anything I got you. I know where
19 it's at now.

20 Well, that was my transition, you know. And, you
21 know, things were going well. I had a good job. I had, you
22 know, good people that were there to help me along the way.
23 And I brought my family up and we got an apartment and
24 brought my granddaughter up, you know, I got to be a
25 grandfather for about a year, you know. And I was going to

1 give that little girl anything she wanted. You know, I was
2 going to give her everything that I failed to give my own
3 daughters and my sons.

4 She was a little gamer. She loved playing on her
5 little tablet thing, you know. Well, I brought my son up,
6 as well. Well, he's a gamer, too, so. He was pretty good.
7 Kids and their games, you know. Well, I had to give my
8 daughter back, my granddaughter back, you know, her mother
9 loves her, too. You know, it was just temporary. Well, my
10 granddaughter wanted to go back with her mom anyway because
11 she got tired of her grandpa always pestering her, trying to
12 get her to play outside.

13 During that time, Your Honor, you know, life was
14 -- it was wonderful, you know. I got to experience a lot of
15 different things, you know, that normal people do everyday,
16 you know. I got some freedoms after a while and the ankle
17 monitor came off, and I got to, you know, travel and, you
18 know, reunite with family, and unite with new family
19 members, you know. My children, my grandchildren, birthday,
20 and a couple of Christmases.

21 And even at my job, you know, I was offered a
22 supervisor position. Well, I didn't want to take the
23 supervisor position and that means I got to babysit other
24 people. And I was doing that for a lot of years in prison
25 and I just didn't want to do that no more. I just wanted to

1 just go work, and do my job and go home to my family, you
2 know.

3 I'm very remorseful. I can't find no words to
4 express, you know, how remorseful I am sitting here today
5 and how apologetic I am, you know, that my family has to be
6 here. And to, you know, all of the folks out there that I
7 got to meet along the way in my community and in my
8 workplace and -- you know, there's a lot of goodness out
9 there in the world and, you know, and I got to experience
10 that, you know.

11 It's unfortunate, you know, all of the things that
12 are happening today, you know, in our country, throughout
13 the world with the pandemic and, you know, this civil
14 unrest. And it's just really sad, you know, that I can't be
15 where I'm supposed to be with my children and my family. My
16 young sons, you know, are -- they're young fathers, and
17 they're doing a very -- very good -- very phenomenal job at
18 being young fathers right now. My daughters are being
19 wonderful mothers. And I believe that what my children are
20 doing today, you know, they're -- these young people now
21 today are changing the world in their own ways and I believe
22 that my children are going to finally break that vicious
23 cycle, you know, that has ravished my family for
24 generations.

25 For me, to no longer be selfish, you know, in the

1 very beginning when this happened, you know, I thought about
2 not wanting to do this anymore, whatever it was. And, you
3 know, I thought about making selfish acts but I decided
4 that, you know all of the selfish things that I have been
5 doing all my life, that would be the worst selfish thing to
6 do. I had to think about my children and my grandchildren,
7 you know, and my mother and my relatives. And so I decided
8 to push forward and to not give up on myself.

9 There's this story, I can't remember where -- I
10 don't know where it came from, but two mice fell into a
11 bucket of cream and the one mouse quickly gave up and
12 drowned. And the second mouse refused to give up and it
13 struggled so fiercely that it turned the cream into butter
14 and it crawled out. So, Your Honor, I'm that second mouse.

15 And to my mother who could not be here today
16 because she has to be with my brother who has skin cancer
17 and it came back, and so he started his first round of
18 chemotherapy, and so my mother needed to be with him today.
19 And when I spoke to her this morning she felt bad about it.
20 And she apologized to me that she couldn't be here with me,
21 and it just broke my heart because, you know, no mother
22 should have to be in a situation where they have to decide
23 whether they should be with one son who is in the hospital
24 fighting cancer or to be with her other son who is being
25 sentenced in federal court. And that is the situation that

1 I have created for my mother. There's nothing else that can
2 be more heavy on my mind and my heart today.

3 And as I -- as I sit here before the Court, Your
4 Honor, and we had done this before, and I know that the
5 first time you showed great compassion for me. I am not
6 even suggesting on what I would like for you to do, but I
7 would say that as I sit here a humbled man, and I know that
8 the judicial process must take its course. I will continue,
9 regardless of what happens here today, to never give up on
10 myself, not give up before the miracle happens. I got some
11 work to do and I've already started that work.

12 There's been a lot of mental issues that I have
13 tried to ignore over the years, but I know now that, you
14 know, there's things with mental health that make all the
15 difference. And so I begin that process already. The
16 doctors have, you know, helped me, and with medication, and
17 so things they feel like they're -- they feel already like
18 it's making a difference for me in my life, in my day-to-day
19 activities. And especially being in jail, that it helps me
20 to cope. And so I will continue to find my way back to my
21 family.

22 And I would like to thank you, Your Honor, for
23 giving me the opportunity to speak.

24 THE COURT: One question before I go to -- any
25 further thing, at least subject to rebuttal, by defense

1 counsel?

2 MR. CORNWELL: Pardon me, Your Honor?

3 THE COURT: I'm going to go to government's
4 counsel, unless you like anything further, but I'll give you
5 a chance to respond if you like in a moment.

6 MR. CORNWELL: Fine, Your Honor.

7 THE COURT: One question for you, Mr. Neadeau, and
8 that is, obviously, separate from the prison sentence
9 itself, one of the recommendations that I'd like to make is
10 for you to have -- apart from the mental health screening
11 and the medication issue is recommending that you
12 participate in the Residential Drug Alcohol Treatment
13 Program. I can't make you do that, but I'm hoping you'd be
14 willing to do that. Are you willing to do that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: All right. I'll hear from
17 government's counsel and then I'll come back to defense
18 counsel then before I make any decisions.

19 MR. WESLEY: Your Honor, we'll just simply say
20 that the government believes that the 180 months is a fair
21 and just sentence in this case and that per the agreement,
22 we are remaining silent on the 2005 case.

23 THE COURT: Anything further by defense counsel?

24 MR. CORNWELL: No. Not much to rebut there, Your
25 Honor.

1 THE COURT: Okay.

2 Well, I'll go ahead. And I'll just thank everyone
3 for their written submissions they made. I'll respond
4 briefly to what's been said and also to the written
5 submissions and then announce the sentence.

6 And then also I will stop and discuss, once I've
7 imposed a sentence, explain how we typically handle the
8 recommendation for facility. Most federal judges, including
9 me, would like to pick the facility. The Bureau of Prisons
10 is probably glad we can't and then they get to select the
11 facility, so.

12 As probably I know the lawyers in the room know
13 and probably others do, too, but separate from the guideline
14 issues and the mandatory minimum issues, obviously, there's
15 the MM word, or mandatory minimum, means that separate from
16 the guidelines the Court can't go below the 180 months.
17 We'd probably be in the situation of something in that area,
18 with or without the mandatory minimum, consistent with other
19 similar cases, but the -- even assuming everything is
20 exactly as it's been stated in the reports, including the
21 report from the sentencing specialist who submitted her
22 report, and for the record, again, that's Ms. Hunter.

23 But as most people know, the definition of a fair
24 sentence is what is that sentence that will promote respect
25 for the law, sufficient but not greater than necessary to do

1 that, will address the human being in front of me, will not
2 create any unwarranted sentencing disparities. And then we
3 get to, and I'll speak in plain language rather than use the
4 legal terms deterrence, because there's kind of two types of
5 so-called deterrence, but it really is promoting respect for
6 the law and saying to a community and saying to a society,
7 well, when this conduct occurs, here's the -- here's the
8 punishment, or the consequence, so I'll go through that
9 now.

10 And, actually, to the extent it's even relevant, I
11 went back and reread the 2006 report. And, obviously, back
12 then I remember -- in fact, there's a quote in the report
13 from, and maybe you said this at the sentencing back then
14 too, you had hoped you'd be able to change your life when
15 you came out of prison.

16 And the -- I'll say something to you, Mr. Neadeau,
17 that I do to many individuals, and I think I would say it
18 even if I didn't have five daughters, two sets of twins,
19 actually. And through no fault of my parents they were --
20 because I grew up on a little farm in southeastern Minnesota
21 and my dad had to quit school in eighth grade and work the
22 farm, even though he was the youngest of seven kids. And
23 then out of law school I went up to the Iron Range and
24 worked on the Fond du Lac and the Red Lake Indian
25 Reservations during the 22 years I was up there.

1 But the -- and I'm not claiming that as a white
2 male growing up in America that I understand some of the
3 obstacles of minorities, especially people, whether it's
4 Native American, African American, other communities, I
5 understand -- but hopefully I've learned a few things along
6 the way.

7 And so that even though I can't totally understand
8 those, even though I kind of grew up in kind of the
9 post-active Civil Rights movement. And I'm no expert and
10 sometimes I put this up -- I went through alcohol drug
11 treatment, that's my 43-year medallion, because I'm an older
12 fella back in the mid-to-late 70s and still volunteer and
13 I'm active. And I'll talk a little bit about that in a
14 moment about working a spiritual program, or the 12-step
15 program, taking things a day at a time, and getting into
16 that right group and so, because I think that -- that's a
17 key for a lot of individuals, and I'll get to that in just a
18 moment.

19 But the thing is, I think -- and I thought this in
20 part back when we met in 2006, but you've kind of made it
21 clear now, too. One, you've kind of apologized, which is --
22 tells me something about you to your family, because,
23 obviously, good families are there with people -- with
24 individuals during the good and the best of times and so,
25 hence, you have family, and children and friends here.

1 And so -- and I'm a bit old-fashioned. I think
2 that a lot of us should probably be judged by the type of
3 examples we set and are we there for our families. And
4 because I think you're sincere in what you say.

5 I think something that's important for me to say
6 is a lot of good moms and dads, good sons, good uncles, good
7 aunts, good parents commit crimes.

8 I was confronted by a nine year old a few years
9 ago saying, did you think my mom was a bad person because
10 you sent her to prison. I said, no, no. A lot of good
11 moms, good dads make mistake and commit crimes. Judges do
12 not make moral judgments like that.

13 But on the other hand, and it's consistent with
14 something you've said and what I've read here, too, whether
15 it's now at your age of 53, or for a variety of reasons, you
16 have more reasons than a number -- than lots of people I see
17 in court, and a number of them are sitting right here now,
18 to kind of make this work.

19 And then what's important, before I kind of
20 explain how I see what is a fair sentence in the case, our
21 statistics completely contradict the unfair stereotypes of
22 convicted felons, especially when they're from a minority
23 group because -- well, these are federal statistics, state
24 statistics aren't quite like this, but 95 percent of every
25 felon convicted and sentenced to prison and coming out in

1 federal court in Minnesota are working full-time making a
2 lot -- making a lot more than minimum wage.

3 And then maybe even more importantly is a little
4 over two out of three people, even though the statistics are
5 the other way in state courts and other areas, for a lot of
6 different reasons, and they were when I was a young state
7 court judge many years ago up in the -- in northern
8 Minnesota, but when one of my closest friends was a judge
9 and chief judge up in Crookston, and recently retired from
10 the State Supreme Court here and -- Russ Anderson, but our
11 statistics say more than two out of three people sitting
12 where you're sitting if they work a program stay straight
13 and sober, they never return on a new crime.

14 Now, it's true the state statistics are flipped
15 the other way, for a lot of different reasons. Part of it's
16 lack of funding and other issues, and not kind of working
17 with people, but two out of three people sitting where
18 you're sitting in our courts, that's our statistics, do not
19 return.

20 And so if there's no reason that you should not
21 be -- apart from what people think of the sentence today and
22 everything, there's no reason why you shouldn't be in that
23 group. And even though it's not your responsibility, one of
24 the things you do, if you can do the things that you want to
25 do, not just for your family, but in doing those, you also

1 challenge people's unfair stereotypes of people, whether
2 they're convicted felons, from a minority group, because
3 there are -- let's face it, there are a lot of those unfair
4 assumptions and stereotypes made. And so the -- so I've
5 taken a look at this and, yes, and I will be ordering you to
6 be screened.

7 And then one thing that I do, not unique to your
8 case, where there's identifiable mental health and alcohol
9 and drug issues, no matter what happens inside the prison
10 walls, we'll have immediate assessments done and screen you
11 as you -- prior as you come out because one of the issues
12 I've had with the Bureau of Prisons, frankly speaking, is
13 someone coming out of prison, they say, well, you've been
14 here this long, there's no need to follow up with any
15 aftercare.

16 Well, if that person was working for a reputable
17 program -- and not all BOP programs are like this, but if
18 they were working for a reputable program, whether it was
19 University of Minnesota, Hazelden, or other places, they
20 would be fired right where they stood if they said, well,
21 you're done now, you're out, no need to follow up with
22 anything, that's not how the real world works. And a lot of
23 the --

24 So one thing that it's unfortunate, I read --
25 excuse me, in your presentence investigation, one of your

1 frustrations has been -- and to the extent it's relevant, or
2 important to the lawyers, or anybody in the courtroom,
3 Paragraph 73 on Page 19, it says, you've -- you've benefited
4 much more in your point of view from individual treatment
5 and therapy, and we'll work on that as well. But then you
6 have been a little frustrated with some group treatment
7 settings because people sit around and complain about their
8 upbringings.

9 Well, if somebody is really working, whether in a
10 spiritual program, 12-step program, or some other
11 faith-based program, there's different kinds, that is not
12 what happens -- is supposed to happen in those meetings.
13 And I've been going to meetings for years and that just --
14 that shouldn't happen that way where people sit down and --
15 so, but we'll look at each of those issues irregardless of
16 what happens inside the prison walls, and so.

17 And the other thing is, I see you've been a little
18 frustrated with no prescription eyeglasses. I'll order the
19 -- I'll order the Bureau to screen for that. And,
20 obviously, you're probably aware -- before I announce the
21 sentence, you're probably aware, you don't need me because
22 I'm no expert, but especially if you're on some medication
23 to address some mental health issues, which is really a good
24 thing, then obviously you know that mixing it with even a
25 small, small amount of, whether it's marijuana, alcohol,

1 meth, cocaine, the list goes on, it's like taking poison.
2 And so that becomes crucial, too, because there's a lot of
3 very, very good medications out there. And so we'll address
4 that issue as well.

5 And so -- and obviously I think you're probably
6 aware that as one of the pluses to some of the fancy
7 technology now at most facilities, even though some of us
8 have some exceptions to some of the fees charged to inmates
9 at facilities, you have the ability, unlike at -- well,
10 Sherburne's had some of it, too, but you have not just the
11 ability to Facetime and stuff, but they actually have, once
12 we'll hopefully get back to some type new normal, whatever
13 that is, you can actually have real visitation, as you're
14 aware of, with family apart from any of the technology
15 visits, so.

16 Well, looking at it, both based upon looking at
17 what we call the 3553(a) factors that -- that definition of
18 a fair sentence, a number of people would look at this and
19 say, well, it should be pretty simple, Judge, you should
20 give -- you got, you know, you have to have give the 180,
21 and then there's no reason why you shouldn't give some type
22 of consecutive sentence.

23 Well, based upon the -- sometimes the hard time
24 credit I give and the fact that if you do what you say
25 you're going to do and then if you don't, then it's on my

1 shoulders and yours, then I'm going to be imposing a
2 51-month sentence on the violation and I'm going to run it
3 concurrent.

4 So what they'll do is take 180 -- I think it's a
5 fair recommendation. In fact, if somebody were to ask,
6 well, isn't it true in most similarly-situated cases it
7 would be more likely to be -- some or all of it to be
8 consecutive? True. But I think looking at all of the
9 factors that -- especially when I can go to a five-year
10 period of supervised release -- and you can ask your -- you
11 know this, you probably don't have to ask your lawyer in
12 private, but our probation officers, including Stephanie
13 Thompson and others, yes, they enforce the rules, but the
14 ones I work with are usually the last ones to give up on
15 someone, as well. And because it's -- that's what the best
16 probation officers do. And I would challenge anybody who
17 states that, well, they just look for technical violations
18 so they can send people away, that's not the people that I
19 work with, so.

20 And then, of course, the prosecutor has acted
21 contrary to the unfair stereotypes, in a good way he has,
22 unfair stereotypes where because the -- obviously, probably
23 the safe way out with him would be say, well, it's clear, go
24 for the maximum sentence, everything consecutive. And that
25 hasn't happened either.

1 And so you owe me nothing, and probably nobody in
2 the courtroom except your family and those around you, but
3 let's make this work. Because as contrary to what some
4 people think, our statistics, as I've already said,
5 contradict and challenge all these unfair stereotypes.
6 People sitting where you're sitting, two out of three never
7 return. And that's just a fact of -- and that's our
8 statistics. And we really try to work -- work on that and
9 so we -- there's no reason why you shouldn't be in that --
10 in that group.

11 Now, obviously it's true if -- with the conditions
12 I'll put in, your -- your decision to use any alcohol or
13 drugs, you would obligate the Judge, whether it's me or
14 somebody else, to look at additional prison time. And I'm
15 not saying that would serve your best interests, but that's
16 not the test, either.

17 And so I'm hoping that you're kind of at a
18 crossroads, and I think you are, and I think that -- I think
19 that Ms. Hunter believes that you are, too. So I'm -- I'm
20 really hoping we can make this work.

21 So with that in mind, what I'll do is impose a
22 sentence and then come back and ask if there's any requests
23 for clarification. And then we'll specifically address the
24 recommendation for facility, and kind of what I'm familiar
25 with what's been happening in the context of the COVID-19

1 situation.

2 As the sentence of this Court and judgment of the
3 law, I commit you to the custody of the Bureau of Prisons
4 for a period of 180 months.

5 And then I also at this time, before I go to the
6 conditions of that -- of the newest sentence on the charge
7 you have, I'll use the phrase, conditionally pled guilty to.
8 And then I'll define that by law for appeal purposes.

9 Then on the violation, I impose a sentence of
10 51 months, direct that that run current with the 181-month
11 sentence. And then upon the expiration of that time, that
12 file will be closed. And that's the -- that addresses that.

13 I impose no fine, given your financial
14 circumstances.

15 And do we -- and I think we've taken care of the
16 forfeiture issue, counsel, on the weapon that's not an
17 issue, I believe?

18 MR. WESLEY: I don't believe it's an issue, Your
19 Honor.

20 THE COURT: Do you agree with that, defense
21 counsel, that's not an issue?

22 MR. CORNWELL: It's not an issue.

23 THE COURT: All right. The Court imposes a term
24 of five years of supervised release, which is the maximum
25 without making any promises to you.

1 We have cases where someone is 100 percent
2 compliant and living the life they want to live with all our
3 conditions. It's not unusual for us, often times, to
4 shorten that by a year or more these days, and sometimes
5 more depending on how people are doing, but it's also our
6 responsibility to help people make the transition into the
7 community.

8 Now there's certain -- as you're aware, so-called
9 mandatory conditions, but most of these would be put into
10 effect any way.

11 First, you shall not commit any crimes, be they
12 federal, state or local.

13 Second, you may not unlawfully possess a
14 controlled substance unless something is prescribed by your
15 medical provider, then you should follow those
16 recommendations. And you'll be tested once within two weeks
17 of your release from prison. And I would have this
18 condition on if no alcohol or drug use. And then two
19 additional times, and I'll get to that in a moment.

20 Now some people have asked me, but you haven't,
21 well, what about -- well, what about marijuana? Well, right
22 now the feds and the state people can't get together on that
23 because it's still a federal crime.

24 And, yes, there's some very legitimate medical
25 uses for marijuana in the THC levels in the marijuana today,

1 compared to the cornsilk that I used when I was a young
2 person, apart from other drugs, are two different things.

3 And Colorado needs to be proud because they have
4 more people in inpatient treatment for THC addiction than
5 any other state in the country. And so, yes, still think
6 the feds and the state have to get that worked out because
7 there are some very legitimate limited medical uses for it.

8 And, actually, they decriminalized the use of
9 marijuana decades ago, so if we're out smoking dope together
10 out on the highway, as long as we have less than an ounce on
11 us, it's a petty misdemeanor. And so sometimes I'm asked
12 about that. And the feds and the state people are still
13 trying to work that out.

14 You shall cooperate with the collection of a DNA
15 sample as every federal defendant has since -- and maybe
16 you've already given one back because that's been in
17 effect since October of 2004 for criminal identification
18 purposes.

19 Now, the next condition, if it happens, it's a
20 so-called mandatory condition, it would be the first time in
21 my 22 years here as a federal judge, if no one has planned
22 your release and said, out the door, we're done -- and I've
23 never seen that happen, it's happened sadly in state court
24 with some frequency, but I've never seen it happen in any of
25 my cases here, and it happened when I was a state judge

1 years ago up north, too, but the -- if no one's planned your
2 release and they say out the door, then within three days of
3 your release you shall check in or report to a U.S.
4 Probation Officer.

5 Now I'll move on to the specific conditions that I
6 think are not only fair but serve your best interests:

7 You will -- we'll direct that you complete an
8 immediate assessment to participate in any recommended
9 program to address alcohol or drug use, including inpatient
10 treatment, outpatient treatment, support group work,
11 individual therapy or counseling.

12 And no matter what the Bureau of Prisons says,
13 even if you complete successfully the RDAP Program, until --
14 and I won't substitute my judgment for an expert assessor or
15 evaluator, but until I'm otherwise convinced, you shall
16 participate at least either one 12-step meeting per week, at
17 a minimum, or -- and some people want a spiritually-based
18 program, that's different -- some people misconstrue a
19 12-step program, it's not a faith-based program. Some are
20 like the Teen and the Adult Challenge, but for a lot of
21 people a higher power's the group. But there's a spiritual
22 group -- and I've dealt with some individuals who have a
23 different spiritual group, we do those or I approve those
24 all the time, and then make a good faith effort to have a
25 mentor or a sponsor. And we'll work with you on that, but

1 we'll get an assessment done.

2 Secondly, and unrelated to that, I'll direct that
3 you participate in any assessment, recommended
4 psychological, or psychiatric counseling or treatment.

5 And that will be -- and we must be fair about how
6 we screen for that because if -- if a defendant felt that,
7 well, Jeez, they're having us do all these things and I need
8 to come in front of the Judge because this is ridiculous,
9 that probably happens in probably one out of hundreds of
10 cases. I can't remember the last time that happened. That
11 gets worked out. So we'll screen that.

12 And then sometimes, especially with all of us, the
13 male folks in America, this kind of macho image we're all
14 supposed to have, sometimes there are grieving and other
15 counseling issues, too, that we try to screen for and have a
16 more progressive, proactive wellness philosophy.

17 And so you'll be screened for those issues. And
18 as I've already said, you'll follow the recommendations for
19 any medication that your medical provider recommends.

20 And then I'll ask the Bureau of Prisons to screen
21 for prescription eyeglasses in the case.

22 And, of course, what's implied here, too, is a
23 condition you shall completely abstain from the use of
24 alcohol and other drugs, unless something is prescribed by
25 your medical provider.

1 I'll also impose a \$100 special assessment for the
2 Crime Victims Fund, which cannot be waived or suspended.
3 And that was the law back in 2006, too. It goes into a
4 general fund of victims of crimes.

5 And they'll -- if you're working at UNICOR or
6 nonUNICOR program at the Bureau of Prisons facility, they'll
7 sometimes withhold if you're getting income from that, \$25
8 on a quarterly basis to pay that -- excuse me, and so we'll
9 -- that's usually a nonissue, as well.

10 You have a right to take an appeal from the case.
11 And let me explain that.

12 You have waived your right to appeal the sentence
13 as long as it's 180 months, no more than 180 months, which
14 is the case.

15 You have preserved your right to appeal under the
16 rules the search and the issue that was decided by the
17 magistrate judge and affirmed by me with respect to what led
18 to the arrest and the charges. And so if you choose to
19 appeal the case, the notice of appeal must be filed within
20 14 days after we file what's called our sentencing judgment,
21 which your lawyer gets a copy of, prosecutor, probation.
22 And then we send it down to Texas, along with a presentence
23 investigation. They'll also see the report from Miss
24 Hunter. And so we'll probably do that no later than what,
25 tomorrow?

1 MS. SAMPSON: Tomorrow.

2 THE COURT: Unless we're asked for some reason to
3 delay it.

4 And I think you want me to make a recommendation
5 -- make a recommendation for Minnesota, correct?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: And then absent objection, I know
8 there won't be an objection from government, but -- and I'm
9 quite certain there won't be one from you or your attorney.
10 And I'd like to think the Bureau of Prisons carefully looks
11 at this and I'll just leave it at that but I usually would
12 put in there, I hereby recommend a Minnesota facility so --
13 to be close to immediate family.

14 Because I'd like to think that -- because one
15 thing that probably applies to all human beings whether
16 they've ever been to court or not, we all do better if we're
17 fortunate to have the love and support of family and
18 friends. And so I generally put that in there. I'd like to
19 think that would make a difference to the Bureau of Prisons
20 and -- but they don't have to follow my recommendation, but
21 I'll recommend that.

22 And each of the facilities here in Minnesota, and
23 you're probably aware also, have the Residential Drug
24 Alcohol Treatment Program and other called vocational, and
25 other services.

1 So the -- and right now it's kind of been up in
2 the air, it varies week by week, and we maybe hear some of
3 these things that the jail about when they're transporting
4 people, depending on -- before the virus situation they were
5 taking about seven to nine days to make a decision. Then we
6 all find out together. In other words, they don't call me,
7 your lawyer, prosecutor, probation, we all find out
8 together. And so the -- but now it's -- it kind of varies
9 week by week. We get an updated report each week in terms
10 of, one, there's going to be a transport by van or by plane,
11 depending on what the designated facility is. And so that's
12 -- the good news is is that our local -- most local
13 facilities, they've both -- the three male federal prisons
14 and one female prison in Minnesota, we've had no inmates
15 with the -- knock on wood or something, no inmates with
16 the virus. That's not true, admittedly, across the
17 country. And it's probably not if it's going to happen but
18 when.

19 But anything else before I go to counsel from
20 probation on any other conditions that --

21 MS. THURINGER: No, Your Honor.

22 THE COURT: All right. Anything further by
23 government?

24 MR. WESLEY: No, Your Honor. Thank you.

25 THE COURT: Counsel?

1 MR. CORNWELL: Your Honor, may I just have a
2 moment to speak with Mr. Neadeau?

3 THE COURT: Yeah.

4 MR. CORNWELL: Thank you.

5 (Off-the-record discussion.)

6 MR. CORNWELL: Nothing else. Thank you, Your
7 Honor.

8 THE COURT: Can we make this work, Mr. Neadeau?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Really. I mean, you can think what
11 you want of some older, white guy sitting in a robe up here
12 but really I mean it when I say there's no reason why you
13 can't do the things you want to do. And like I said, our
14 statistics contradict all the unfair stereotypes that are
15 out there. And so I don't know why this can't work.

16 And I hope the designation, they look carefully at
17 that. We'll put that in there because obviously then it
18 would kind of increase the ability of family, friends,
19 children, grandchildren to visit, too, so.

20 There's no reason, even in these complicated times
21 we live in, that we can't make this -- make this work, so.

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: All right. And then I'm sure if
24 anyone has any questions from your family, friends, your
25 counsel can answer those.

1 We stand in recess. We are adjourned.

2 THE DEFENDANT: Thank you.

3 (Court adjourned at 2:22 p.m.)

4 **REPORTER'S CERTIFICATE**

5 I, Lynne M. Krenz, do certify the foregoing
6 pages of typewritten material constitute a full, true and
7 correct transcript of my original stenograph notes, as they
8 purport to contain, of the proceedings reported by me at the
time and place hereinbefore mentioned.

9 /s/Lynne M. Krenz
10 Lynne M. Krenz, RMR, CRR, CRC

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